

# STATE • INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

## FILED

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INDIANA UTILITY  
REGULATORY COMMISSION

PETITION OF VALLEY RURAL )  
UTILITY COMPANY FOR A )  
CERTIFICATE OF TERRITORIAL )  
AUTHORITY TO RENDER )  
RURAL SEWAGE SERVICE )  
IN ADDITIONAL AREAS OF )  
DEARBORN COUNTY, INDIANA )

CAUSE NO. 42673

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On June 17, 2004, Valley Rural Utility Company ("VRUC") filed its Petition in this matter seeking expansion of its authorized service area in Dearborn County for the provision of sewer service. On August 27, 2004, the City of Greendale ("Greendale") filed its *Petition to Intervene*, which Petition was granted by docket entry on August 30, 2004. The Presiding Officer subsequently entertained an objection to that intervention by VRUC, which objection was denied by docket entry on September 9, 2004.

Subsequently, the parties filed a number of motions and responses thereto, which we set out and summarize for the sake of the record. On October 22, 2004, Greendale filed its *Motion to Compel and Request for Extension of Time to Prefile Testimony*. In that motion, Greendale asserted that VRUC should be compelled to more specifically answer Greendale's request for information regarding matters which had been, or are currently before, the Indiana Department of Environmental Management ("IDEM") regarding VRUC's (or HVL Services, Inc.'s) sewage service, and whether VRUC was in compliance with relevant IDEM regulations. Greendale argued that VRUC's response that it "believes it is in compliance" with all regulations was insufficient, and that VRUC should be compelled to provide answers with more specificity. Further, Greendale requested that VRUC be compelled to provide all financial statements since June 1, 1995. As a consequence of all these requests, Greendale asked that it be allowed to extend its time to prefile testimony in this matter. Subsequently, on November 3, 2004, Greendale filed its *Request for Ruling on its Request for Extension of Time to Prefile Testimony*.

On November 4, 2004, VRUC filed its *Response to Motion to Compel and Extension of Time*. VRUC asked that Greendale's motion and request be denied, and asserted that it had objected to Greendale's discovery on the grounds that it was overly broad (referring to "all pending matters" before IDEM) and because it requested information about a prior entity to VRUC, which

VRUC asserted was irrelevant to this proceeding. Further, VRUC stated that it had attempted to resolve the discovery dispute by asking Greendale to clarify its request, to which Greendale had objected and refused to answer. VRUC also asserted that it had answered Greendale's request by stating that it believed it was in compliance with the relevant regulations. Further, VRUC stated that it had asked Greendale to identify any relevant IDEM orders or directives that supported any assumption that VRUC was not in compliance, but that Greendale had refused to answer that question. VRUC asserted that Greendale's request for all correspondence between VRUC and IDEM was overbroad, ambiguous, and also could be achieved by a public records request to IDEM itself. Finally, VRUC stated that IDEM itself had no objection to the expansion of its CTA. Hence, VRUC stated that Greendale's motion should be denied. VRUC also filed on November 4, 2004, its *Response to City of Greendale's Request for Ruling*.

On November 9, 2004, Greendale filed its *Reply to Valley Rural Utility Company's Response to City of Greendale's Motion to Compel*. In essence, Greendale argued that VRUC should answer the requested discovery because (a) VRUC had assumed the business of HVL Services, Inc. ("HVL"), in June 1995, and thus had assumed HVL's obligations under certain IDEM orders; (b) VRUC was party to all IDEM proceedings at issue and thus should not shift the burden to Greendale to identify the matters which Greendale believed are relevant to this proceeding; (c) VRUC's compliance with IDEM regulations is directly relevant to its expansion of the CTA in this proceeding; and (d) the financial information requested should be readily available, and thus produced immediately. For all the asserted grounds, Greendale stated that it should be given the requested material, and given additional time within which to file its testimony.

On November 12, 2004, Greendale filed its *Motion to Compel and Request for Extension of Time to Prefile Testimony*. In this second motion, Greendale requested that VRUC be compelled to provide "all written records of customer complaints and requests for conferences maintained by VRUC, pursuant to 170 I.A.C. 8.5-2-5(d)(1), for the years 1999-2004." VRUC had responded by asserting that while complaints had been received, they had been "investigated and resolved with the customers."

On November 15, 2004, VRUC filed its *Response to the City of Greendale's Second Motion to Compel and Extension of Time to Prefile Testimony*. In this motion, VRUC objected to Greendale's filing because (a) it had been filed after the date for the prefiling of evidence by intervenors and the public, with which date Greendale did not comply; and (b) Greendale had failed to show the relevance of the customer complaint records to its case in this matter.

On November 16, 2004, Greendale filed its *Reply to Valley Rural Utility Company's Response to City of Greendale's Second Motion to Compel and Extension of Time To Prefile Testimony*. Greendale responded to VRUC's argument regarding customer complaints by stating that "[t]he volume and nature of customer complaints from current customers is clearly relevant to whether VRUC should be allowed to expand its service territory and thereby increase its customer base." As to VRUC's argument regarding the filing of testimony, Greendale stated that VRUC must have "overlooked" the fact that such request was tied to the Commission's rulings on the various motions to compel.

We now turn to the merits of the various claims. As to the Motions to Compel, we note that 170 I.A.C. 1-1.1-16, which deals specifically with discovery, states that parties are entitled to discovery pursuant to rules 26 through 37 of the Indiana Rules of Trial Procedure. Further, our rule states that parties may make motions to compel upon the failure of a party to answer propounded discovery. A resort to the Trial Rules regarding discovery disputes shows that the parties have an obligation to attempt resolution before turning to the court for assistance. T.R. 26(F). We note that resolution appears to have been attempted in some, but not all, of the disputed items at issue here.

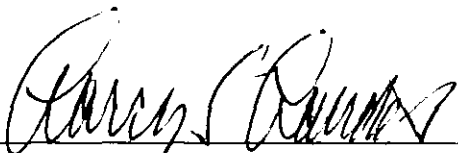
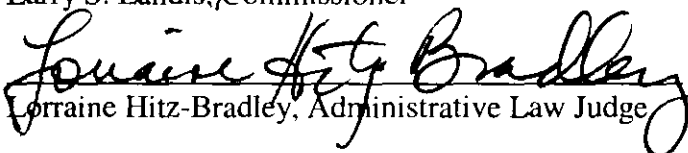
First, as to the issue of VRUC's past and present "proceedings" before IDEM, we note VRUC's assertion that it requested that Greendale clarify its request with regard to what proceedings it meant. In response, Greendale objected to the questions. Notwithstanding this issue, VRUC stated that it believed it was in compliance with all relevant IDEM rules. Added to that assertion, VRUC stated, and provided proof of such claim, that IDEM had no objection to the requested expansion. We note Greendale's assertion that in the same letter, IDEM points out that VRUC has had issues in the past. However, we also note that IDEM nonetheless stated it had no objection. In light of the fact that (a) Greendale refused to clarify its request upon such question by VRUC; (b) VRUC answered that it believed it was in compliance with all relevant regulations; (c) IDEM noted that it had no objection to the proposed expansion; and (d) records of proceedings before IDEM are public records subject to a Public Records Act request, we deny Greendale's Motion to Compel as to IDEM "proceedings" past and present regarding VRUC and/or HVL.

As to the requested financial records from 1995 – 2002, we likewise find this an overly expansive request in light of the requested relief here. For expansion of this CTA, we find three (3) years of financial records to be sufficient. We thus deny Greendale's Motion to Compel VRUC's financial records from 1995-2002. However, as to the requested records regarding customer complaints, we find that Greendale's request has merit. The issues contained in customer complaints, even if resolved, bear on VRUC's asserted ability to provide service. Thus, as to the customer complaint records, we grant Greendale's Motion to compel, and find that VRUC shall provide those records on or before December 15, 2004.

As we have granted relief regarding some of the requested discovery, we also find it necessary to change the hearing and pre-filing dates. Consistent with Greendale's previous request, it shall file its prefiled testimony and exhibits containing its case-in-chief on or before January 17, 2005, with copies to all parties. Petitioner and the Public shall have the opportunity to file cross-answering or rebuttal testimony on or before January 31, 2005. The hearing set for December 15, 2004 is hereby continued until Monday, February 7, 2005, at 9:30 a.m. in Room TC10 of the Indiana Government Center South.

**IT IS SO ORDERED.**

Date 12-8-04

  
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Larry S. Landis, Commissioner  
  
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Lorraine Hitz-Bradley, Administrative Law Judge